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**December 2010 Monthly Report for MTC**

**To: Steve Heminger, Executive Director  
MTC**

**From: Tom Bulger, President  
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GRI**

**Re: Monthly Report for December 2010**

- **House Rules Change**
- **Earmark Ban**
- **Transit Commuter Benefit/Middle Class Tax Relief**
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### **House Rules Change**

In late December, the House announced proposed rule changes for the 112<sup>th</sup> Congress. One of the provisions would end the budgetary firewalls for surface transportation programs; thus, allowing yearly appropriations bills to cut spending below the level set in authorization legislation. Since 1998, House rules dictated that any legislation that funded surface transportation programs at a level lower than authorized levels would be barred from consideration. This effectively guaranteed transportation funding years in advance, as program funding levels were set in long-term authorization bills. Additionally, it also placed funding power on the House Transportation and Infrastructure Committee (T&I).

As the balance of the Highway Trust Fund (HTF) declined over the past couple of years, the guaranteed funding at previously authorized levels meant that surface transportation programs continued to be funded at previously-designated levels (the difference between HTF receipts and program funding levels was addressed through infusions from the General Fund). The new provision means that transportation allocations will now be subject to the annual appropriations process; however, it does not ban General Fund infusions. Rather, it would remove the House requirement to fund programs at levels higher than the HTF receipts allow — even if those funding levels were authorized at a greater level (currently, the “guaranteed” authorized spending levels for FY 2011 are about \$15 billion per year higher than anticipated HTF receipts).

The new rules would ensure that HTF receipts are spent *only* on authorized programs such as highway and transit construction. This secures HTF dollars for transportation programs and bars HTF spending on non-authorized discretionary programs such as the President’s proposed livable communities initiative (\$200 million in grants) and distracted driving grant program (\$50 million).

According to reports, Republican leaders have assured incoming House T&I Chairman John Mica (R-FL) that there will not be drastic cuts to transportation funding. However, some transportation advocates expressed concern that the change would create uncertainty for long-term projects that rely on years of consistent federal support; thus, threatening long-term planning. Another concern is that appropriators may build surpluses in the HTF to help offset the federal budget deficit at the expense of the surface transportation program. There is also concern that the transportation program will shrink if funding levels are tied to shrinking HTF receipts.

The House is poised to approve the rules of the 112<sup>th</sup> Congress on January 5, 2011. It is important to note that this rule will not apply in the Senate. Additionally, if legislation is agreed upon that would break this rule (i.e. “guarantee” funding at authorized levels), the provision could be waived through the rule making process that accompanies any legislation to the House floor.

### **Earmark Ban**

The House rules package does not include a ban on earmarks. Instead of being included as a formal rule change, this ban will be handled administratively by House Republican leadership (by refusing to bring any legislation to the House floor that contains earmarks). This would allow Leadership to postpone the policy decision on handling bills containing Senate earmarks, as the earmark ban did not pass in the Senate.

### **Transit Commuter Benefit/Middle Class Tax Relief**

On December 17, President Obama signed the Middle Class Tax Relief Act of 2010 (H.R. 4853). This legislation extends all Bush-era tax cuts for two years, keeps in place the current version of the estate tax, extends unemployment benefits, reduces a payroll tax, and includes a number of other extensions of tax provisions. In addition, the mass transit commuter benefit parity with the parking commuter benefit (capped at \$230) was extended for one year through 2011. We spent much of December advocating for extension of the parity, and the issue was embraced by transit and policy advocates across the country. Parity extends tax relief to transit riders across the nation, encourages use of alternative forms of commuting, and scores a policy victory for public transportation. Moreover, parity removes the tax-based financial incentive to drive alone to work. Additionally, the legislation included a retroactive two-year extension (through 2011) of the alternative fuels tax credit; however, it did not include an extension of Build America Bonds.

### **Surface Transportation Authorization Extension/Continuing Resolution**

Congress did not pass a full FY 2011 Appropriations bill by the first day of FY 2011. In order to keep the government funded, they passed a continuing resolution (CR) to temporarily “continue” funding federal agencies at their present levels. On December 22, the President signed an extension of the CR into law through March 4, 2011. It included a sixth short-term extension of current surface transportation law also through March 4. The fifth extension was set to expire on December 31, 2010. The CR extends funding for all transportation programs at FY 2010 levels.

Although this legislation provides funding for each account, it does not mean that all of the funds will be released to each agency. For example, the Office of Management and Budget (OMB) will not release funding to agencies for programs where either the House or Senate passed an appropriations bill that does not include funding for the specific program. Because neither the House nor the Senate passed full appropriations bills, we are unsure whether or not the requirement could be triggered. If this requirement does go into effect, it will likely be tied to the House-passed year-long CR and Senate-reported omnibus appropriations bill. This leaves some uncertainty as to the funding of some discretionary programs through March 4, 2011.

### **House Transportation and Infrastructure Committee**

As the 112<sup>th</sup> Congress prepares to convene, the House and Senate committees are taking shape. In the House, the new Republican majority has indicated that they will reduce the size of committees, and the general number of committees on which members will serve. House Republicans announced that the House Transportation and Infrastructure Committee in the new Congress will have 59 members, down from its current membership of 75. The committee makeup will be 33 Republicans and 26 Democrats — compared to 30 and 45 respectively today. Representative John Mica (R-FL) will be the chairman for the 112<sup>th</sup> Congress. Mr. Mica was the ranking member for the past four years, and from 2000-2006 he served as chairman of the aviation subcommittee. The 20 new Republican members are: Lou Barletta (PA), Larry Bucshon (IN), Chip Cravaack (MN), Rick Crawford (AR), Jeff Denham (CA), Blake Farenthold (TX),

Stephen Fincher (TN), Bob Gibbs (OH), Frank Guinta (NH), Richard Hanna (NY), Andy Harris (MD), Jaime Herrera (WA), Randy Hultgren (IL), Jeff Landry (LA), James Lankford (OK), Billy Long (MO), Tom Reed (NY), Jim Renacci (OH), Tim Scott (SC), and Daniel Webster (FL).

The House Democratic Caucus named Representative Nick Rahall (D-WV) as ranking member. Democratic committee members will be announced in January, as well as all subcommittee assignments. It is likely that Representative John Garamendi (D-CA) from the San Francisco Bay Area will serve on the Committee.

### **Surface Transportation Authorization Update**

In December, Congress and the Administration continued to express their intent to move on long-term surface transportation authorization legislation in the 112<sup>th</sup> Congress — with most Congressional and Administration staff focused on internal policy formation. House T&I Committee staff indicated that their authorization schedule includes a release of draft legislation in spring 2011 (see the November 2010 Monthly Report for more details). The Administration is currently crafting legislative priorities they plan to introduce early next year. Senator Barbara Boxer (D-CA), chair of the Senate Environment and Public Works Committee, has committed to working on the transportation bill next Congress.

Conferences aimed at solidifying long-term surface transportation policy continued through December, with most transportation stakeholders identifying policy opportunities and priorities. Agreement on the funding mechanism for a long-term transportation authorization continues to be a key component missing from authorization proposals on the federal side. The final size, scope, and timing of the legislation are also in question. Furthermore, there does appear to be a bipartisan agreement on some key legislative components, such as the incorporation of performance-based planning. As previously mentioned, current federal transportation law has been extended through March 4, 2011. Although it is very unlikely that a full authorization bill will be signed into law by that date, there is optimism that some of the basic questions detailed above will be addressed once Congress returns in January 2011.

### **December Meeting Updates**

Congress returned in December for a busy lame duck session. Our focus was on MTC's priorities in tax legislation (transit commuter benefit, Build America Bonds) and legislation that addressed FY 2011 funding (omnibus appropriations legislation/continuing resolution). Throughout December, we maintained steady contact with House and Senate leadership, Congressional offices that were supportive of the above-indicated tax provisions, House Ways and Means Committee staff, Senate Banking Committee staff, as well as administrative leadership within the U.S. Department of Transportation. Additional meetings are listed on the next page:

*Bipartisan Policy Center*

On December 8, we attended a Bipartisan Policy Center meeting on behalf of MTC's Executive Director Steve Heminger. The meeting included updates and discussions on surface transportation authorization. House and Senate transportation committee staff and Roy Kienitz, Under Secretary for Policy at U.S. DOT, were also in attendance.

*American Public Transportation Association*

On December 3, we attended the American Public Transportation Association's (APTA) annual legislative committee meeting where we overviewed lame duck session issues and APTA's legislative priorities for the 112<sup>th</sup> Congress.

*Congressman Mike Thompson (D-CA)*

Throughout December, we worked closely with staff from Congressman Mike Thompson's office regarding the SMART project and possible earmark rescissions in the House-passed CR.